

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 201 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

EXECUTIVE ENGINEER (O&M)

Versus

PRAVINJI KAPURJI THAKORE

Appearance:

MR TUSHAR MEHTA for Petitioners
MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 02/04/96

ORAL JUDGEMENT

1. Rule. Mr. B.D. Karia waives service of rule. With the consent of the learned Advocates appearing for the parties, the rule is finally heard today.
2. In the Civil Suit filed by opponent plaintiff in

the Court of Civil Judge (J.D.) at Vadnagar, the evidence of the plaintiff was fully recorded. It appears that the evidence of the petitioner defendant was also recorded and one of the witnesses examined by the petitioner defendant at Exhibit 62 was Dilipkumar Fakirchand Shah. At the relevant time, he was serving as Assistant Electrical Inspector and from his examination-in-chief, it transpires that in connection with the nonfatal accident which has taken place, he was directed to make inquiry and that he has thereafter conducted inquiry on 4th of December, 1990 and has recorded a statement of Pravinji - present opponent on 5th of December, 1990. According to him, he has thereafter submitted a report, the true copy whereof was produced at Exhibit 67/1. The said true copy was proved after comparison with the original report to be in the handwriting of the witness and to have been countersigned by Deputy Engineer Shri D.V. Patel. He has also identified the signature of Deputy Engineer D.V. Patel from the original. The respondent plaintiff objected to such document being exhibited, but the trial court after comparing the true copy with the original and in view of the fact that the signature was identified by the witness on the original document at Exhibit 67/1, has exhibited it at Exhibit 69. Along with such report, it appears that there were other annexures and documents which were omitted to be produced by him. In the course of cross examination, the advocate of the original plaintiff could draw the attention of the witness to the fact that number of other documents to which he was referring to, he has not produced. The cross examination thereafter ended on 25th April, 1995.

3. At that stage, the advocate of the petitioners defendants realise the omission in not getting produced and proved the various documents which were attached to the report by the said witness. Therefore, an application at Exhibit 88 was given for recalling the witness and for getting produced and proved the documents which were annexures to the report submitted by the witness. Such application is rejected by the trial court by the impugned order by taking resort to the provision of Order 18 Rule 17A of the Code of Civil Procedure. The trial court has proceeded on footing that Assistant Electrical Inspector is the officer of the Gujarat Electricity Board and therefore whatever documents were in his possession or custody could have been got proved at the time when he was first examined. It is based on this provision that the trial court has found that the petitioners defendants cannot now be permitted to produce document which ought to have been produced by the witness

at the time when he was examined as witness of the petitioners defendants. It is this order which is under challenge before this Court.

4. Mr. Tushar Mehta, learned counsel for the petitioners has submitted that it is true that the application is not stated to be one under order 18 Rule 2(4) or under Section 151 of the CP Code nor it is stated to be one under order 18 Rule 17A of the C.P. Code. The trial court itself has invoked the assistance of Order 18 Rule 17A for rejecting the application. Mr. B.D. Karia, learned Counsel appearing for the respondent on the other hand rightly pointed out to the court that the language of order 18 Rule 17A if literally construed, it applies to the parties to the proceeding and not to the witnesses of the parties to the proceeding. However, in my opinion, the fact remains that the witness has at the time of his initial examination-in-chief referred to various documents which were annexures to his report. He has even referred to the contents thereof. Unfortunately, he has omitted to produce the same or that it could be said that the advocate of the petitioners defendants was not vigilant enough to get such documents produced. At the same time, it shall have to be kept in mind that the documents were already in existence. They were already extensively referred to in examination-in-chief. There was no possibility of such documents being concocted or got up. It is not even the case of the plaintiff that such documents are subsequently got up or concocted. It is also to be kept in mind that the Assistant Electrical Inspector is an officer of the State Government appointed under the provisions of the Act and not an employee of the Gujarat Electricity Board. Though by keeping necessary vigilance, the advocate of the petitioners defendants could have avoided the situation which has arisen, but, in my opinion, the production of the aforesaid document is required to be allowed in the wider interest of justice. If reference is made to order 18 Rule 2(4) of the CP Code or at least by invoking inherent power under Section 151 of the CP Code, a just defence, if it is found to be just and acceptable by the trial court, cannot be kept out of consideration by not permitting the production of such document. This Court may not be for a moment understood to have said that the trial court should accept such evidence. It is for the trial court to appreciate and to decide as to whether to accept such additional documentary evidence or not. But, at least production of such document should not have been rejected especially when the provisions of Order 18 are read in the spirit in which the Legislature intend them to

operate. In that view of the matter, this court is of the opinion that the order passed by the trial court dated 17th January, 1996 below Exhibit 88 in Regular Civil Suit No. 54 of 1994 is quashed and set aside and the trial court is directed to issue witness summons to Dilipkumar Fakirchand Shah to remain present in the court for evidence along with documents of which the production is sought for. After such documents are produced and witness is re-examined, it goes without saying that respondent plaintiff shall have the right to further cross-examine the said witness or to lead further evidence to negate or deny such evidence.

5. Since there was undoubtedly a lapse on the part of the petitioners defendants, in my opinion, it is a fit case where the petitioner defendants are subjected to condition of paying reasonable cost to the respondent plaintiff. The petitioners defendants have already deposited Rs. 350 in this Court under the order of this Court dated 7th February, 1996. The Registrar is directed to pay the said amount to the learned Advocate Mr. B.D. Karia, who shall transmit the same to the opponent plaintiff and to the Board is further directed to pay the balance cost Rs. 350/- (Rupees three hundred and fifty only) by directly depositing the same in the trial court and the trial court shall see to it that the said amount is paid over to the plaintiff directly and not to anyone else. Rule is made absolute.
